

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * <input type="text" value="20"/>	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4	File No.* SR - <input type="text" value="2016"/> - * <input type="text" value="11"/>	Amendment No. (req. for Amendments *) <input type="text"/>
---	--	--	--

Filing by Municipal Securities Rulemaking Board
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input type="checkbox"/>	Section 19(b)(3)(A) * <input checked="" type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
			Rule		
Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>	<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
			<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input checked="" type="checkbox"/> 19b-4(f)(6)	

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010	Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934
Section 806(e)(1) * <input type="checkbox"/>	Section 806(e)(2) * <input type="checkbox"/>
Section 3C(b)(2) * <input type="checkbox"/>	

Exhibit 2 Sent As Paper Document <input type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>
---	---

Description

Provide a brief description of the action (limit 250 characters, required when Initial is checked *).

Proposed Rule Change to Delay the Due Date for Certain Submissions Under Rule G-45 and Provide Guidance on the Application of Rules G-42 and G-44 to Municipal Advisors to Sponsors or Trustees of Municipal Fund Securities

Contact Information

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name * <input type="text" value="Pamela"/>	Last Name * <input type="text" value="Ellis"/>
Title * <input type="text" value="Associate General Counsel"/>	
E-mail * <input type="text" value="pellis@msrb.org"/>	
Telephone * <input type="text" value="(202) 838-1500"/>	Fax <input type="text"/>

Signature

Pursuant to the requirements of the Securities Exchange Act of 1934,
Municipal Securities Rulemaking Board
has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

(Title *)

Date <input type="text" value="08/12/2016"/>	Corporate Secretary <input type="text"/>
By <input type="text" value="Ronald W. Smith"/>	
(Name *)	

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

Persona Not Validated - 1453405662880,

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFF website.

Form 19b-4 Information *

Add Remove View

The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change *

Add Remove View

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies *

Add Remove View

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change, security-based swap submission, or advance notice being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications

Add Remove View

Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit 3 - Form, Report, or Questionnaire

Add Remove View

Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit 4 - Marked Copies

Add Remove View

The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

Add Remove View

The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

Partial Amendment

Add Remove View

If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of the Proposed Rule Change

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934, as amended (the “Act” or “Exchange Act”),¹ and Rule 19b-4 thereunder,² the Municipal Securities Rulemaking Board (the “MSRB” or “Board”) is hereby filing with the Securities and Exchange Commission (the “Commission” or “SEC”) a proposed rule change to delay by two years, until August 29, 2018, the date on which submissions must be made pursuant to Rule G-45, on reporting of information on municipal fund securities, by underwriters of programs established to implement the Stephen Beck, Jr., Achieving a Better Life Experience Act of 2014 (the “ABLE Act” and an “ABLE program”).³ The submissions on Form G-45 from such underwriters currently are due August 29, 2016. However, the current due dates under Rule G-45 for submissions from underwriters of other types of municipal fund securities, namely tax-advantaged college savings plans established under Section 529 of the Internal Revenue Code of 1986, as amended (the “Code”) (a “529 college savings plan”),⁴ would remain unchanged.

In addition, the proposed rule change would provide guidance under (i) Rule G-42, on duties of non-solicitor municipal advisors, that such rule applies to municipal advisors that engage in municipal advisory activities for sponsors or trustees of ABLE programs and (ii) Rule G-44, on supervisory and compliance obligations of municipal advisors, that such rule equally applies to municipal advisors that engage in municipal advisory activities for sponsors or trustees of 529 college savings plans, ABLE programs, and other municipal fund securities (the amendment to Rule G-45 and guidance under Rules G-42 and G-44, collectively the “proposed rule change”). The MSRB proposes an immediate effectiveness for the proposed rule change.

(a) The text of the proposed rule change is attached as Exhibit 5. Text proposed to be added is underlined, and text proposed to be deleted is enclosed in brackets.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self Regulatory Organization

The proposed rule change was adopted by the MSRB at its July 15, 2016 meeting. Questions concerning this filing may be directed to Pamela K. Ellis, Associate General Counsel at 202-838-1500.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The ABLE Act was enacted on December 19, 2014 as part of The Tax Increase Prevention Act of 2014 (Pub. L. No. 113-295).

⁴ 26 U.S.C. 529(b)(1)(A)(ii).

3. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

The MSRB proposes to delay by two years, until August 29, 2018, the date the submissions are due under Rule G-45 on Form G-45 from underwriters to ABLE programs. In addition, the MSRB proposes to provide guidance under (i) Rule G-42, that such rule applies to municipal advisors that engage in municipal advisory activities for sponsors or trustees of ABLE programs and (ii) Rule G-44, that such rule equally applies to municipal advisors that engage in municipal advisory activities for sponsors or trustees of 529 college savings plans, ABLE programs, and other municipal fund securities.

The ABLE Act added Section 529A to the Code to permit a state, or an agency or instrumentality thereof, to establish and maintain a new type of tax-advantaged savings program to help support individuals with disabilities in maintaining health, independence, and quality of life. Section 529A was modeled on Section 529 of the Code.⁵ Section 529 of the Code, in part, established 529 college savings plans to encourage saving for future higher education costs.⁶ The SEC has determined that interests offered by such 529 college savings plans are municipal securities under Section 3(a)(29) of the Act.⁷

Given the similarities between the structure of ABLE accounts and 529 college savings plan accounts and the manner in which interests in those accounts will be distributed, the MSRB requested interpretive guidance from the SEC staff. Specifically, the MSRB requested guidance on:

- (i) whether interests in an ABLE account offered through an ABLE program are "municipal securities," as defined in Section 3(a)(29) of the Exchange Act, and

⁵ Report to accompany H.R. 647, Committee on Ways and Means, H.R. Rept. No. 113-614, part 1 at 7 (2014).

⁶ Section 529 also established prepaid tuition plans. 26 U.S.C. 529(b)(1)(A)(i). Under a prepaid tuition plan, an investor may purchase tuition credits or certificates on behalf of a designated beneficiary, which entitle the beneficiary to the waiver or payment of qualified higher education expenses. Prepaid tuition plans generally have residency requirements. Such credits or certificates generally are not viewed as being municipal securities, and dealers generally do not participate in the marketing of prepaid tuition plans.

⁷ Exchange Act Release No. 70462 (Sept. 20, 2013), 78 FR 67468, 67472-73 (Nov. 12, 2013). See Letter from Catherine McGuire, Chief Counsel, Division of Market Regulation, SEC, to Diane G. Klinke, General Counsel, MSRB (Feb. 26, 1999) (determining that at least some interests in higher education trusts are municipal securities under the Act).

- (ii) whether a dealer participating in the sale of those interests would be participating in a “primary offering” and thus be subject to the requirements of Rule 15c2-12 under the Exchange Act.

In response to the first request, the SEC staff stated that:⁸

at least some interests in ABLE accounts . . . may be “municipal securities” as defined in Section 3(a)(29) of the Exchange Act, depending on the facts and circumstances, including without limitation, the extent to which an ABLE account through an ABLE Program is a direct obligation of, or obligation guaranteed as to principal or interest by, a State or any agency or instrumentality thereof.

With respect to the second request, the SEC staff stated:⁹

[W]e note that Rule 15c2-12(f)(7) under the Exchange Act defines a “primary offering” as including an offering of municipal securities directly or indirectly by or on behalf of an issuer of such securities. Based upon your letter and communications with MSRB staff, it is our understanding that interests in ABLE Programs generally are offered only by direct purchase from the issuer. Accordingly, we would view those interests as having been sold in a “primary offering” as that term is defined in Rule 15c2-12. If a dealer is acting as an “underwriter” (as defined in Rule 15c2-12(f)(8)) in connection with that primary offering, the dealer may be subject to the requirements of Rule 15c2-12.

In April 2016, after the Board had received the SEC staff guidance, the Board provided interpretative guidance under MSRB Rule D-12, on the definition of “municipal fund security.”¹⁰

The April guidance provided that interests in ABLE accounts may be municipal fund securities, and that to the extent that dealers effect transactions in municipal fund securities, such dealers may be subject to all Board rules, unless those dealers are specifically exempted from any of those rules. The April guidance also anticipated that the Board would publish guidance to address particular issues, including Rule G-45, applicable to the sale of interests in ABLE programs by dealers.¹¹ The proposed rule change is the first of such guidance to address particular issues related to the sale of interests in ABLE programs by dealers and related to municipal advisory activities provided by municipal advisors to sponsors or trustees of ABLE programs.

⁸ Letter dated March 31, 2016 from Jessica S. Kane, Director, Office of Municipal Securities, SEC, to Robert A. Fippinger, Esq., Chief Legal Officer, MSRB, in response to letter dated December 31, 2015 from Robert A. Fippinger to Jessica S. Kane available at <https://www.sec.gov/info/municipal/msrb-letter-033116-interests-in-able-accounts.pdf> [footnote omitted].

⁹ Id.

¹⁰ MSRB Regulatory Notice 2016-14 (Apr. 12, 2016) (the “April guidance”).

¹¹ Id.

Specifically, as ABLÉ programs become operational, the proposed rule change would delay, by two years from August 29, 2016 until August 29, 2018, the date that submissions are due under Rule G-45 from underwriters to ABLÉ programs. The MSRB believes that the delay would help ensure that the MSRB receives reliable, complete and accurate filings on Form G-45 from such underwriters. The MSRB also believes that the delay would help ensure that the MSRB receives more meaningful data about a larger set of ABLÉ programs on Form G-45. However, the current deadlines under Rule G-45 for submissions from underwriters of 529 college savings plans would remain unchanged.

Further, the proposed rule change would provide guidance in supplementary material under (i) Rule G-42, that such rule applies to municipal advisors that engage in municipal advisory activities for sponsors or trustees of ABLÉ programs and (ii) Rule G-44, that such rule equally applies to municipal advisors that engage in municipal advisory activities for sponsors or trustees of 529 college savings plans, ABLÉ programs, and other municipal fund securities. The proposed guidance would provide clarity about the applicability of such rules to municipal advisors that engage in municipal advisory activities for sponsors or trustees of municipal fund securities. The MSRB is proposing this guidance in response to requests from industry groups in other Board rulemaking proposals.

(b) Statutory Basis

The MSRB believes that the proposed rule change is consistent with Section 15B(b)(2)(C) of the Act,¹² which provides that the MSRB's rules shall:

be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities and municipal financial products, to remove impediments to and perfect the mechanism of a free and open market in municipal securities and municipal financial products, and, in general, to protect investors, municipal entities, obligated persons, and the public interest.

As ABLÉ programs become operational, the proposed rule change would provide underwriters to ABLÉ programs with additional time to submit reliable, accurate and complete data to the MSRB under Rule G-45. The proposed rule change also would provide the MSRB with more meaningful data about a larger set of ABLÉ programs under Rule G-45. Further, the proposed rule change would provide guidance about the applicability of (i) Rule G-42 to municipal advisors that engage in municipal advisory activities for sponsors or trustees of ABLÉ programs and (ii) Rule G-44 to municipal advisors that engage in municipal advisory activities for sponsors or trustees of 529 college savings plans, ABLÉ programs, and other municipal fund securities. The proposed guidance would provide clarity about the applicability of such rules to municipal advisors that engage in municipal advisory activities for sponsors or trustees of municipal fund securities.

¹² 15 U.S.C. 78o-4(b)(2)(C).

4. Self-Regulatory Organization's Statement on Burden on Competition

Section 15B(b)(2)(C) of the Act¹³ requires that MSRB rules be designed not to impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The MSRB does not believe that the proposed rule change would impose any burden on competition not necessary or appropriate in furtherance of the Act. The proposed rule change would extend the date that submissions on Form G-45 are due from underwriters to ABLE programs by two years from August 29, 2016 until August 29, 2018. The proposed rule change also would provide guidance about the applicability of (i) Rule G-42 to municipal advisors that engage in municipal advisory activities for sponsors or trustees of ABLE programs and (ii) Rule G-44 to municipal advisors that engage in municipal advisory activities for sponsors or trustees of 529 college savings plans, ABLE programs, and other municipal fund securities.

5. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received on the proposed rule change.

6. Extension of Time Period of Commission Action

Not applicable.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2) or Section 19(b)(7)(D)

The proposed rule change is effective upon filing pursuant to Section 19(b)(3)(A) of the Act¹⁴ and Rule 19b-4(f)(6) thereunder.¹⁵ The proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after filing or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. In addition, the MSRB provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing the proposed rule change, or such shorter time as the Commission may designate, as specified in Rule 19b-4(f)(6)(iii) under the Act.¹⁶

The MSRB requests that the Commission waive the requirement that the proposed rule change, by its terms, not become operative for 30 days after the date of the filing as set forth in

¹³ Id.

¹⁴ 15 U.S.C. 78s(b)(3)(A).

¹⁵ 17 CFR 240.19b-4(f)(6).

¹⁶ 17 CFR 240.19b-4(f)(6)(iii).

Rule 19b-4(f)(6)(iii)¹⁷ to provide certainty with respect to the due date for underwriters to ABLE programs making submissions on Form G-45. The deadline for underwriters to ABLE programs to submit data under Rule G-45 for the period ending June 30, 2016 is August 29, 2016. To delay such submissions, it is important that the proposed rule change to Rule G-45 become effective immediately. The MSRB also requests that the Commission waive that requirement to provide timely guidance about the applicability of (i) Rule G-42 to municipal advisors that engage in municipal advisory activities for sponsors or trustees of ABLE programs and (ii) Rule G-44 to municipal advisors that engage in municipal advisory activities for sponsors or trustees of 529 college savings plans, ABLE programs, and other municipal fund securities.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

Not applicable.

9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

11. Exhibits

Exhibit 1 Completed Notice of Proposed Rule Change for Publication in the Federal Register

Exhibit 5 Text of Proposed Rule Change

¹⁷ Id.

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-_____; File No. SR-MSRB-2016-11)

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Delay the Due Date for Certain Submissions Under Rule G-45 and Provide Guidance on the Application of Rules G-42 and G-44 to Municipal Advisors to Sponsors or Trustees of Municipal Fund Securities

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act” or “Exchange Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on the Municipal Securities Rulemaking Board (the “MSRB” or “Board”) filed with the Securities and Exchange Commission (the “Commission” or “SEC”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the MSRB. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The MSRB filed with the Commission a proposed rule change to delay by two years, until August 29, 2018, the date on which submissions must be made pursuant to Rule G-45, on reporting of information on municipal fund securities, by underwriters of programs established to implement the Stephen Beck, Jr., Achieving a Better Life Experience Act of 2014 (the “ABLE Act” and an “ABLE program”).³ The submissions on Form G-45 from such underwriters currently are due August 29, 2016. However, the current due dates under Rule G-45 for submissions from underwriters of other types of municipal fund securities, namely tax-

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The ABLE Act was enacted on December 19, 2014 as part of The Tax Increase Prevention Act of 2014 (Pub. L. No. 113-295).

advantaged college savings plans established under Section 529 of the Internal Revenue Code of 1986, as amended (the “Code”) (a “529 college savings plan”),⁴ would remain unchanged.

In addition, the proposed rule change would provide guidance under (i) Rule G-42, on duties of non-solicitor municipal advisors, that such rule applies to municipal advisors that engage in municipal advisory activities for sponsors or trustees of ABLE programs and (ii) Rule G-44, on supervisory and compliance obligations of municipal advisors, that such rule equally applies to municipal advisors that engage in municipal advisory activities for sponsors or trustees of 529 college savings plans, ABLE programs, and other municipal fund securities (the amendment to Rule G-45 and guidance under Rules G-42 and G-44, collectively the “proposed rule change”). The MSRB proposes an immediate effectiveness for the proposed rule change.

The text of the proposed rule change is available on the MSRB’s website at www.msrb.org/Rules-and-Interpretations/SEC-Filings/2016-Filings.aspx, at the MSRB’s principal office, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the MSRB included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The MSRB has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

⁴ 26 U.S.C. 529(b)(1)(A)(ii).

The MSRB proposes to delay by two years, until August 29, 2018, the date the submissions are due under Rule G-45 on Form G-45 from underwriters to ABLE programs. In addition, the MSRB proposes to provide guidance under (i) Rule G-42, that such rule applies to municipal advisors that engage in municipal advisory activities for sponsors or trustees of ABLE programs and (ii) Rule G-44, that such rule equally applies to municipal advisors that engage in municipal advisory activities for sponsors or trustees of 529 college savings plans, ABLE programs, and other municipal fund securities.

The ABLE Act added Section 529A to the Code to permit a state, or an agency or instrumentality thereof, to establish and maintain a new type of tax-advantaged savings program to help support individuals with disabilities in maintaining health, independence, and quality of life. Section 529A was modeled on Section 529 of the Code.⁵ Section 529 of the Code, in part, established 529 college savings plans to encourage saving for future higher education costs.⁶ The SEC has determined that interests offered by such 529 college savings plans are municipal securities under Section 3(a)(29) of the Act.⁷

⁵ Report to accompany H.R. 647, Committee on Ways and Means, H.R. Rept. No. 113-614, part 1 at 7 (2014).

⁶ Section 529 also established prepaid tuition plans. 26 U.S.C. 529(b)(1)(A)(i). Under a prepaid tuition plan, an investor may purchase tuition credits or certificates on behalf of a designated beneficiary, which entitle the beneficiary to the waiver or payment of qualified higher education expenses. Prepaid tuition plans generally have residency requirements. Such credits or certificates generally are not viewed as being municipal securities, and dealers generally do not participate in the marketing of prepaid tuition plans.

⁷ Exchange Act Release No. 70462 (Sept. 20, 2013), 78 FR 67468, 67472-73 (Nov. 12, 2013). See Letter from Catherine McGuire, Chief Counsel, Division of Market Regulation, SEC, to Diane G. Klinke, General Counsel, MSRB (Feb. 26, 1999) (determining that at least some interests in higher education trusts are municipal securities under the Act).

Given the similarities between the structure of ABLE accounts and 529 college savings plan accounts and the manner in which interests in those accounts will be distributed, the MSRB requested interpretive guidance from the SEC staff. Specifically, the MSRB requested guidance on:

- (i) whether interests in an ABLE account offered through an ABLE program are “municipal securities,” as defined in Section 3(a)(29) of the Exchange Act, and
- (ii) whether a dealer participating in the sale of those interests would be participating in a “primary offering” and thus be subject to the requirements of Rule 15c2-12 under the Exchange Act.

In response to the first request, the SEC staff stated that:⁸

at least some interests in ABLE accounts . . . may be “municipal securities” as defined in Section 3(a)(29) of the Exchange Act, depending on the facts and circumstances, including without limitation, the extent to which an ABLE account through an ABLE Program is a direct obligation of, or obligation guaranteed as to principal or interest by, a State or any agency or instrumentality thereof.

With respect to the second request, the SEC staff stated:⁹

[W]e note that Rule 15c2-12(f)(7) under the Exchange Act defines a “primary offering” as including an offering of municipal securities directly or indirectly by or on behalf of an issuer of such securities. Based upon your letter and communications with MSRB staff, it is our understanding that interests in ABLE Programs generally are offered only by direct purchase from the issuer. Accordingly, we would view those interests as having been sold in a “primary offering” as that term is defined in Rule 15c2-12. If a dealer is acting as an “underwriter” (as defined in Rule 15c2-12(f)(8)) in connection with that primary offering, the dealer may be subject to the requirements of Rule 15c2-12.

⁸ Letter dated March 31, 2016 from Jessica S. Kane, Director, Office of Municipal Securities, SEC, to Robert A. Fippinger, Esq., Chief Legal Officer, MSRB, in response to letter dated December 31, 2015 from Robert A. Fippinger to Jessica S. Kane available at <https://www.sec.gov/info/municipal/msrb-letter-033116-interests-in-able-accounts.pdf> [footnote omitted].

⁹ Id.

In April 2016, after the Board had received the SEC staff guidance, the Board provided interpretative guidance under MSRB Rule D-12, on the definition of “municipal fund security.”¹⁰

The April guidance provided that interests in ABLE accounts may be municipal fund securities, and that to the extent that dealers effect transactions in municipal fund securities, such dealers may be subject to all Board rules, unless those dealers are specifically exempted from any of those rules. The April guidance also anticipated that the Board would publish guidance to address particular issues, including Rule G-45, applicable to the sale of interests in ABLE programs by dealers.¹¹ The proposed rule change is the first of such guidance to address particular issues related to the sale of interests in ABLE programs by dealers and related to municipal advisory activities provided by municipal advisors to sponsors or trustees of ABLE programs.

Specifically, as ABLE programs become operational, the proposed rule change would delay, by two years from August 29, 2016 until August 29, 2018, the date that submissions are due under Rule G-45 from underwriters to ABLE programs. The MSRB believes that the delay would help ensure that the MSRB receives reliable, complete and accurate filings on Form G-45 from such underwriters. The MSRB also believes that the delay would help ensure that the MSRB receives more meaningful data about a larger set of ABLE programs on Form G-45. However, the current deadlines under Rule G-45 for submissions from underwriters of 529 college savings plans would remain unchanged.

Further, the proposed rule change would provide guidance in supplementary material under (i) Rule G-42, that such rule applies to municipal advisors that engage in municipal advisory activities for sponsors or trustees of ABLE programs and (ii) Rule G-44, that such rule

¹⁰ MSRB Regulatory Notice 2016-14 (Apr. 12, 2016) (the “April guidance”).

¹¹ Id.

equally applies to municipal advisors that engage in municipal advisory activities for sponsors or trustees of 529 college savings plans, ABLÉ programs, and other municipal fund securities. The proposed guidance would provide clarity about the applicability of such rules to municipal advisors that engage in municipal advisory activities for sponsors or trustees of municipal fund securities. The MSRB is proposing this guidance in response to requests from industry groups in other Board rulemaking proposals.

2. Statutory Basis

The MSRB believes that the proposed rule change is consistent with Section 15B(b)(2)(C) of the Act,¹² which provides that the MSRB's rules shall:

be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities and municipal financial products, to remove impediments to and perfect the mechanism of a free and open market in municipal securities and municipal financial products, and, in general, to protect investors, municipal entities, obligated persons, and the public interest.

As ABLÉ programs become operational, the proposed rule change would provide underwriters to ABLÉ programs with additional time to submit reliable, accurate and complete data to the MSRB under Rule G-45. The proposed rule change also would provide the MSRB with more meaningful data about a larger set of ABLÉ programs under Rule G-45. Further, the proposed rule change would provide guidance about the applicability of (i) Rule G-42 to municipal advisors that engage in municipal advisory activities for sponsors or trustees of ABLÉ programs and (ii) Rule G-44 to municipal advisors that engage in municipal advisory activities for sponsors or trustees of 529 college savings plans, ABLÉ programs, and other municipal fund securities. The proposed guidance would provide clarity about the applicability of such rules to

¹² 15 U.S.C. 78q-4(b)(2)(C).

municipal advisors that engage in municipal advisory activities for sponsors or trustees of municipal fund securities.

B. Self-Regulatory Organization's Statement on Burden on Competition

Section 15B(b)(2)(C) of the Act¹³ requires that MSRB rules be designed not to impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The MSRB does not believe that the proposed rule change would impose any burden on competition not necessary or appropriate in furtherance of the Act. The proposed rule change would extend the date that submissions on Form G-45 are due from underwriters to ABLE programs by two years from August 29, 2016 until August 29, 2018. The proposed rule change also would provide guidance about the applicability of (i) Rule G-42 to municipal advisors that engage in municipal advisory activities for sponsors or trustees of ABLE programs and (ii) Rule G-44 to municipal advisors that engage in municipal advisory activities for sponsors or trustees of 529 college savings plans, ABLE programs, and other municipal fund securities.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time

¹³

Id.

as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁴ and Rule 19b-4(f)(6) thereunder.¹⁵

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-MSRB-2016-11 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549.

All submissions should refer to File Number SR-MSRB-2016-11. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of

¹⁴ 15 U.S.C. 78s(b)(3)(A).

¹⁵ 17 CFR 240.19b-4(f)(6).

the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 am and 3:00 pm. Copies of the filing also will be available for inspection and copying at the principal office of the MSRB. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-MSRB-2016-11 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, pursuant to delegated authority.¹⁶

Secretary

¹⁶ 17 CFR 200.30-3(a)(12).

Rule G-45: Reporting of Information on Municipal Fund Securities

(a) - (d) No change.

(e) [*Transitional Provision.* Notwithstanding section (a), the first submissions due under the rule, which are for the reporting period ending on June 30, 2015, shall be made by no later than October 28, 2015.] *Transition Provision for ABLÉ Programs.* Notwithstanding section (a), the first submissions due under the rule by underwriters of primary offerings of interests in programs established and maintained by a state, or an agency or instrumentality thereof, to implement the Stephen Beck, Jr., Achieving a Better Life Experience Act of 2014 (an “ABLE program”), will be for the reporting period ending June 30, 2018.

* * * * *

Rule G-42: Duties of Non-Solicitor Municipal Advisors

(a) - (f) No change.

---Supplementary Material:

.01 - .11 No change.

.12 529 College Savings Plans, ABLÉ Programs and Other Municipal Fund Securities. This rule applies equally to municipal advisors to sponsors or trustees of 529 college savings plans, ABLE programs (i.e., a program established and maintained by a state, or an agency or instrumentality thereof, to implement the Stephen Beck, Jr., Achieving a Better Life Experience Act of 2014), and other municipal fund securities. All references in this rule to an “official statement” include the [plan] disclosure document for a 529 college savings plan or an ABLE program and the investment circular or information statement for a local government investment pool.

.13 - .15 No change.

* * * * *

Rule G-44: Supervisory and Compliance Obligations of Municipal Advisors

(a) - (f) No change.

---Supplementary Material:

.01 Municipal Fund Securities. This rule applies equally to municipal advisors to sponsors or trustees of 529 college savings plans, ABLÉ programs (i.e., a program established and maintained by a state, or an agency or instrumentality thereof, to implement the Stephen Beck, Jr., Achieving a Better Life Experience Act of 2014), and other municipal fund securities.

[.01] **.02 Written Supervisory Procedures.** A municipal advisor's written supervisory procedures shall take into consideration, among other things, the advisor's size; organizational structure; nature and scope of municipal advisory activities; number of offices; the disciplinary and legal history of its associated persons; the likelihood that associated persons may be engaged in relevant outside business activities; and any indicators of irregularities or misconduct (*i.e.*, "red flags"). In the case of a municipal advisor with any associated persons permitted under all applicable law to supervise their own activities, the written supervisory procedures must address the manner in which, in the absence of separate supervisory personnel, such procedures are nevertheless reasonably designed to achieve compliance with applicable rules.

[.02] **.03 Small Municipal Advisors.** A municipal advisor with few personnel, or even only one associated person, can have a sufficient supervisory system under this rule. The rule allows the designation of one person to be responsible for supervision, and allows the tailoring of written supervisory procedures based on, among other things, an advisor's size.

[.03] **.04 Appropriate Principal.** Designated supervisory principals must be vested with the authority to carry out the supervision for which they are responsible and have sufficient knowledge, experience and training to understand and effectively discharge their responsibilities. They also must have the authority to implement the established written supervisory procedures and take any other action necessary to fulfill their responsibilities. Even if not so designated, whether a person has responsibility for supervision under this rule depends on whether, under the facts and circumstances of a particular case, that person has the requisite degree of responsibility, ability or authority to affect the conduct of the employee whose behavior is at issue.

[.04] **.05 Review of Compliance Policies and Supervisory Procedures.** The reviews under paragraph (b) of this rule should, at a minimum, consider any compliance matters that arose since the previous review, any changes in the municipal advisory activities of the municipal advisor or its affiliates, and any changes in applicable rules that might suggest a need to revise the written compliance policies or supervisory procedures. Although paragraph (b) specifically requires reviews to be conducted at least annually, municipal advisors should consider the need, in order to comply with all of the other requirements of this rule, for interim reviews.

[.05] **.06 Chief Compliance Officer.** A chief compliance officer has a unique and integral role in the administration of a municipal advisor's compliance processes. A chief compliance officer is a primary advisor to the municipal advisor on its overall compliance scheme and the policies and procedures that the municipal advisor adopts in order to comply with applicable rules. To fulfill this role, a chief compliance officer should have competence in the process of (1) gaining an understanding of the services and activities that need to be the subject of written compliance policies and written supervisory procedures; (2) identifying the applicable rules and standards of conduct pertaining to such services and activities based on experience and/or consultation with others; (3) developing, or advising other business persons charged with the obligation to develop, policies and procedures that are reasonably designed to achieve compliance with applicable rules and standards of conduct; and (4) developing programs to test compliance with the municipal advisor's policies and procedures. It is the intention of this rule to foster regular and significant interaction between senior management and the chief compliance officer regarding the municipal advisor's comprehensive compliance program. The chief compliance officer may be a principal

of the firm or a non-employee of the firm. If a non-employee, then the person designated as chief compliance officer must have the competence described above and the municipal advisor retains ultimate responsibility for its compliance obligations.

[.06] .07 Responsibility for Compliance Functions. The chief compliance officer, and any compliance officers that report to the chief compliance officer, shall have responsibility for and perform the compliance functions contemplated by this rule. Nothing in this rule, however, is intended to limit or discourage the participation by any of the employees of the municipal advisor in any aspect of the municipal advisor's compliance program.

[.07] .08 Ability of Chief Compliance Officer to Hold Other Positions. The requirement to designate a chief compliance officer does not preclude that person from holding any other positions within the municipal advisor, including serving in any position in senior management or being designated as a supervisory principal, provided that person can discharge the duties of chief compliance officer in light of all of the responsibilities of any other positions.

[.08] .09 Effect of Annual Certification on Business Line Responsibility. The Board recognizes that supervisors with business line responsibility are accountable for the discharge of a municipal advisor's compliance policies and written supervisory procedures. The signatory to the certification required by this rule is certifying only as to having processes in place to establish, maintain, review, test and modify the municipal advisor's written compliance and supervisory policies and procedures and the execution of this certification and any consultation rendered in connection with such certification does not by itself establish business line responsibility.